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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

21 CR 269 (CM)

5 MALIK SANCHEZ,

6 Defendant.

7 -----x

8 New York, N.Y.

9 May 6, 2021

12:40 p.m.

10 Before:

11 HON. COLLEEN McMAHON,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS,

15 Acting United States Attorney for the

Southern District of New York

16 KAYLAN E. LASKY

Assistant United States Attorney

17 DAVID PATTON

18 FEDERAL DEFENDERS OF NEW YORK

Attorney for Defendant

19 BY: CLAY KAMINSKY

20 ALSO PRESENT:

21 Francesca Piperato, Pretrial Services Officer

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1 (Case called)

2 THE DEPUTY CLERK: Please state your appearances.

3 MS. LASKY: Good afternoon, your Honor. Kaylan Lasky,
4 for the government.

5 THE COURT: Good afternoon, Ms. Lasky.

6 MR. KAMINSKY: Good afternoon, your Honor. Clay
7 Kaminsky, for Malik Sanchez.

8 THE COURT: Good afternoon, Mr. Kaminsky.

9 THE DEPUTY CLERK: Also on the line, Judge, is
10 Francesca Piperato, from pretrial services.

11 Did I say your name correctly, Francesca?

12 MS. PIPERATO: Yes, Francesca Piperato, from pretrial
13 services.

14 THE COURT: Ms. Francesca, okay, good.

15 And, thank you, Francesca, I got the updated report.

16 MS. PIPERATO: No problem, your Honor.

17 MR. KAMINSKY: Your Honor, I don't have the updated
18 report. Is that something I should have?

19 THE COURT: The updated pretrial services report tells
20 me when his next court date is in state court. That's the
21 update.

22 MR. KAMINSKY: Okay. Understood, your Honor.

23 THE COURT: I'm happy to get you a copy.

24 MR. KAMINSKY: That's fine, your Honor.

25 THE COURT: Okay.

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1 Mr. Kaminsky, it's your nickel.

2 MR. KAMINSKY: Thank you, your Honor.

3 So we can get into the facts and why conditions can be
4 set that would assure Mr. Sanchez's appearance in court and the
5 safety of the community, but I think there's an antecedent
6 legal issue, which is whether there can even be a contention
7 hearing in this case.

8 THE COURT: Yes, I understand the antecedent legal
9 issue, and you are correct that the crime that's charged does
10 not fall within the detention hearing statute. It's a
11 bootstrap argument that's being made by the government alleging
12 that the hoax -- the hoax, h-o-a-x, hoax, pretend thing -- that
13 the government has charged this man with, a crime that the
14 government admits, by virtue of its charge, was never intended
15 to be anything other than pretend, is a crime that involves --
16 I'm sorry, makes this a case -- not a crime -- makes this a case
17 that involves either an 844(i), the use or threatened use of a
18 weapon of mass destruction, even though if it did, the
19 government would have charged that -- I'm sorry, that's the use
20 of explosives to damage a building or property, the government
21 would have charged that if it really did involve that, or
22 2332a(a), two little As, use or threatened use of a weapon of
23 mass destruction. Boy, if it really involved that, the
24 government would have charged that. I know this. I withdrew
25 the Newburgh forces.

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1 So, I understand your argument and the government's
2 bootstrap argument. I don't think I'm going to need to get
3 there. It presents a fascinating legal issue, it would make a
4 great law school exam question, but I don't think I need to get
5 there.

6 Can we talk about the facts and conditions, please?

7 MR. KAMINSKY: Yes, your Honor.

8 Your Honor, I think what the conditions should be,
9 which is a little bit more than I proposed in magistrates
10 court --

11 THE COURT: Right, you didn't propose nearly enough.

12 MR. KAMINSKY: Your Honor, I think he should be on
13 home detention with electronic monitoring. His mother, who is
14 in the court here today --

15 THE COURT: Hello, ma'am.

16 MR. KAMINSKY: -- Nathali Chamba, who works for the
17 Department of Education, will be a third-party custodian, and
18 he will be on home detention with electronic monitoring.
19 That's my proposal, your Honor. We can do a bond in the amount
20 that your Honor sees fit. May.

21 I speak a little bit about the risk of flight because
22 I did some preparation on that?

23 THE COURT: No, I want you to. I mean, that's part of
24 what you need to do.

25 MR. KAMINSKY: Your Honor, there's no reason to

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1 believe he's a risk of flight. I spoke with his Legal Aid
2 attorney, who I actually hoped to have here, but she got caught
3 up in 100 Centre Street. So here's what happened: On
4 March 20th, he was arrested after he waited -- there was an
5 amazing incident that was charged -- he waited for the police to
6 arrive, and he calmly was arrested. He has never been accused
7 of -- there has never been any bench warrant, there has never
8 been any --

9 THE COURT: What was the date of the hearing he
10 allegedly missed? Was that the one that was five days after he
11 was put in the Essex County detention facility?

12 MR. KAMINSKY: No, your Honor. There is -- in
13 fairness to the government, there was an earlier one on
14 March 8th, and here's what happened: They gave him a slip of
15 paper when he was arrested that said he was supposed to go to
16 100 Centre Street. They also took his phones. He communicated
17 diligently with his attorney by email. It turned out that it
18 was supposed to be a remote hearing. His attorney wrote him an
19 email, which he didn't check because he didn't have the phone.
20 He later got it that day. His attorney told him about the
21 hearing on the day of. I have this in confirmation from the
22 Legal Aid attorney. Her name is Jacqueline Dombroff. She told
23 him that day. He didn't get the email. He wrote her that
24 night and said, oh, no, it looks like I missed it, can we
25 reschedule? And then he kept in touch with her after that. He

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1 kept in touch with her before that and after that. A ball was
2 dropped. It was not, in candor and in fairness, dropped by
3 Mr. Sanchez. He was in touch with his attorney. He was not
4 given the information of where he needed to go, no bench
5 warrant was issued, no bench warrant has ever been issued.

6 THE COURT: That's because there are a lot of problems
7 over there right now. I mean, let's not kid ourselves. I've
8 been in touch with a number of state court judges, including
9 the chief judge, and they're having difficulty getting their
10 operations restarted. It's a much more complicated and
11 cumbersome process than we have to go through. We're very
12 lucky here.

13 MR. KAMINSKY: Yes.

14 THE COURT: So, there are balls getting dropped, and I
15 understand that. Then he missed a hearing on the 19th of
16 April, but he couldn't very well go because he was in Essex.

17 MR. KAMINSKY: Correct. And he was basically kept
18 incommunicado because he was under quarantine.

19 THE COURT: Right.

20 MR. KAMINSKY: He successfully completed probation
21 once before. Another element that we might make part of the
22 bail package is mental health treatment. He previously was
23 under the care of a psychiatrist, he got medication, he was in
24 counseling. The care of the psychiatrist ended some years ago.
25 The counseling ended because of the pandemic, and it's during

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1 the pandemic that he appears to have started reaching out in
2 this way through YouTube. You know, I think that psychological
3 and psychiatric care could be part of the bail package, your
4 Honor.

5 THE COURT: Oh, yeah, oh, yeah, anybody who thinks
6 what I saw in the video was funny is definitely in need of
7 mental healthcare, definitely.

8 MR. KAMINSKY: Your Honor, the videos clearly aren't
9 funny.

10 THE COURT: They're not funny.

11 MR. KAMINSKY: But they're also not a reason to detain
12 a 19-year-old.

13 The other reason, the risk of flight, the government
14 says that his guidelines range is 30 to 36 months. It's not.
15 That's giving him all kinds of enhancements that don't apply.
16 It is also using each time he says in that 30-second clip that
17 he's going to detonate a bomb is a separate incident of a
18 threat, to say that there's more than one threat. I calculate
19 his guidelines at either zero to six, if he gets credit for
20 this being a one-time thing, where there was a little
21 forethought, or if he doesn't get that credit, then six to
22 twelve. He's in criminal history category --

23 THE COURT: I take the guidelines -- presumptive
24 guidelines into account very slightly on a crime of this
25 nature.

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1 MR. KAMINSKY: Yes, your Honor.

2 THE COURT: This is a crime with a five-year statutory
3 maximum penalty. You know how often I see crimes with a
4 five-year statutory penalty? Maybe once every three years.

5 MR. KAMINSKY: I don't see them very often either,
6 your Honor.

7 This is -- the government goes into his juvenile
8 records and goes through allegations that weren't even
9 substantiated. I'm not sure -- look, he says some upsetting
10 things, but he's bailable.

11 THE COURT: Okay. I'll hear from the government.
12 I've read your letter.

13 MS. LASKY: Thank you, your Honor. I won't belabor
14 all of the different points that we make in our letter. I will
15 highlight a few things, however, for the government's position,
16 which, first of all, I think it's very important to note that
17 despite repeated interactions with the criminal justice system,
18 the defendant is not changing his behavior. This is, of
19 course, in reference to the multiple different arrests --

20 THE COURT: Yes, but those are state court crimes, and
21 the state court will deal with them. And this Court will not
22 be used as a vehicle to get around the state's policy decisions
23 on bail. Okay? I won't be used in that way. I will not be
24 used in that way.

25 MS. LASKY: Understood, your Honor.

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1 THE COURT: So, okay. He's got some state crimes that
2 he's been accused of -- low-level felony, high-level
3 misdemeanors, I think there are three. He is -- maybe one of
4 them was already disposed of. He has state court appearances.
5 The state let him out on those. That's the state's business,
6 it's not mine. And I'm not making a bail decision on the basis
7 of the state court crimes of which he has not yet been
8 convicted. Okay? I will not make a bail decision on that
9 basis.

10 MS. LASKY: Understood, your Honor. It's his response
11 to judicial and criminal intervention that is of concern to the
12 government.

13 THE COURT: Why? He had one meaningful response to
14 judicial intervention, and he seems to have gotten through it
15 all right, and then for three years, he didn't do anything.

16 MS. LASKY: Correct, your Honor. It's the pattern of
17 behavior, particularly in the last six months. And,
18 understood, your Honor, but I think with the recent cases that
19 have been disposed of, as your Honor pointed out, there is the
20 adjournment in contemplation of dismissal, also the conditional
21 discharge for climbing the Queensboro Bridge. Both of those,
22 as I understand it from communications with the state
23 prosecutor, included a condition that the defendant not get
24 rearrested for six months.

25 THE COURT: And the state court can take care of it.

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1 MS. LASKY: Understood, your Honor.

2 THE COURT: He's got to go in front of a state judge
3 on the 19th of May. I don't know whether in person or
4 virtually, but he has to do that. And if at that time, the
5 state court, which will undoubtedly be apprised of what you
6 have charged him with, says, you've got yourself arrested,
7 guess what -- that's the state court's business, it's not my
8 business.

9 MS. LASKY: Yes, your Honor.

10 Additionally, the evidence in this case is very
11 strong. As you've seen already, your Honor, much of this
12 conduct, and the conduct particularly charged here in the bomb
13 threat, is on video, and we also have social media records,
14 statements from victims, which also provide strong incentive to
15 flee. There is also one video --

16 THE COURT: How do they provide incentive to flee?

17 MS. LASKY: The fact that the evidence in the case is
18 strong, your Honor.

19 THE COURT: Okay. When guys are arrested with drugs,
20 the evidence is strong, and they're presumption cases, and
21 frequently people are let out. This is not a presumption case.
22 Yes, I've seen the crime. I've seen it, because he videotaped
23 it, and he broadcast it on YouTube, and it's disgusting. It's
24 absolutely disgusting. It's juvenile, it's puerile, it's
25 deeply troubling, but it's bailable.

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1 MS. LASKY: Yes, your Honor.

2 Your Honor has also pointed out that this is the most
3 serious -- well, not in these words exactly, but it is the most
4 serious charge the defendant has appeared to face.

5 THE COURT: Yes, the most serious charge he has
6 appeared to face is that he perpetrated a hoax, he did
7 something pretend, which, under federal law, subjects him to a
8 greater punishment than spraying somebody with pepper spray
9 does under state law.

10 MS. LASKY: Correct, your Honor, which also
11 provides --

12 THE COURT: Absolutely true. One of the oddities of
13 federal law, that a real incident subjects him to, I don't
14 know, one to three, and a hoax can subject him to as much as
15 five years.

16 MS. LASKY: Yes, your Honor.

17 THE COURT: Right.

18 MS. LASKY: So it's --

19 THE COURT: Got that.

20 MS. LASKY: Understood, your Honor.

21 So it's for these reasons, your Honor, that the
22 government contends that he is a risk of flight. And I
23 understand you've read the government's submission, so I won't
24 belabor --

25 THE COURT: I have, I have, and I find that this

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1 defendant poses no serious – by the way, the statute does say
2 serious – serious risk of nonappearance if he is released on
3 the conditions I would propose, which it turns out Mr. Kaminsky
4 has come to his senses and realized are the conditions that he
5 should have proposed all along, which are home confinement, on
6 a bracelet, with mental health counseling. He's had two
7 encounters with the criminal justice system that would be
8 pertinent. He's complied with the conditions of probation for
9 two years, which does not necessarily suggest that he would
10 fail to abide by the orders of this Court.

11 He failed to attend one videoconference on his state
12 law case in March. I have nothing but respect for the state
13 courts as a former state court judge. I have some
14 understanding of what they must have been laboring under for
15 the last year. I would give pretty much anybody a pass on that
16 basis because I know what difficulty they are having getting
17 restarted, getting people noticed, and things like that. I
18 accept the proffer of Mr. Kaminsky from his state court lawyer
19 that the defendant, as soon as he became aware of the
20 conference, asked his lawyer to have it rescheduled, which does
21 not suggest that he is someone who is trying to avoid coming to
22 court when he's required to come to court. He obviously missed
23 his conference on April 21st, but that's because he was in the
24 Essex County Jail. And I want to make sure he doesn't miss the
25 next conference, so that the state court judge can decide

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1 whether, in light of what has happened since he or she last saw
2 Mr. Sanchez since he was arrested, the dispositions on the
3 previous state court cases should be reversed, or that new
4 conditions should be set, or even that they should put him in
5 on bail on his state court case. That's a decision for the
6 state court judge to make at his next scheduled appearance.

7 It's my assessment that if he's kept in his parents'
8 home 24/7 on a monitoring bracelet, he does not present a
9 serious risk of nonappearance.

10 Do you want to argue danger?

11 MS. LASKY: If your Honor is saying that danger is not
12 pertinent because we're not capable of getting to that place,
13 then I won't waste the Court's time, your Honor.

14 THE COURT: Well, yeah, because I just don't think you
15 even come close on nonappearance. I really don't.

16 MS. LASKY: Understood.

17 THE COURT: So I, again, with great respect for
18 Judge Wang, she was in a position where she had to make a
19 decision fairly quickly. I've had a lot of time to consider
20 this. They don't have that luxury upfront in the arraignment
21 part, but --

22 MS. LASKY: Yes, your Honor. The government also does
23 raise the argument about serious risk that the defendant will
24 threaten or intimidate witnesses --

25 THE COURT: There's absolutely no proof that this

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1 defendant would threaten or intimidate a witness or that he
2 even would know how to do so. His crimes, the things he's done
3 that I've seen on tape, involved his going up to total
4 strangers. He doesn't know their names, he doesn't know where
5 they live. How is he supposed to intimidate them?

6 MS. LASKY: There is at least one incident, your
7 Honor, where a person associated with one of the macing victims
8 calls 911, her contact information was posted as part of his
9 video. His followers, as I understand it, have since actually
10 doxxed her, meaning they have sent her text messages and posted
11 her information.

12 THE COURT: Has he?

13 MS. LASKY: No, your Honor, but I'm saying --

14 THE COURT: Has he violated any of his orders of
15 protection?

16 MS. LASKY: Not as far as I know, your Honor.

17 THE COURT: Fine. Because if he violates an order of
18 protection, all you have to do is call Mr. O'Neill, and he will
19 be in so quick, his head won't have stopped spinning.

20 MS. LASKY: Understood, your Honor. I was just saying
21 there was one instance where he knows the contact information
22 and name of an individual.

23 But, understood, your Honor. If it's preferable to
24 the Court, at this point, to talk about conditions --

25 THE COURT: I think we should talk seriously about

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1 conditions.

2 MS. LASKY: Okay, your Honor.

3 THE COURT: This is a young man who, as far as I can
4 tell -- if you watched the video, and I have, of the incident
5 that underlies this case, the first thing I thought was, this
6 is a kid who needs to be seeing a psychiatrist, this is
7 somebody who needs mental health counseling. I don't know if
8 he needs to be on medication, I have no idea, I'm not that kind
9 of a professional. Mr. Kaminsky tells me he has previously
10 been on medication, so that it's possible that this is the
11 process of being off his meds. I don't know. A lot of these
12 kinds of things have cropped up during the pandemic. So we
13 definitely need to get a mental health counselor, we definitely
14 need to have him imprisoned, in quotes, in his home. But he
15 comes from what appears to be a good, solid family, with whom
16 he has appropriate parental child relationship, lives with his
17 family. I just think that home confinement here -- I don't know
18 what else the government needs or wants -- but with a relatively
19 low bond, and an appropriate number of cosigners, and a little
20 speech from me, we should be able to -- travel documents
21 surrendered, no travel plus home confinement means home
22 confinement, as he's about to find out, I think we should be
23 able to dispose of this case fairly quickly, because I will say
24 one thing for the government, it has very strong evidence.

25 MS. LASKY: Your Honor, if I may, at the last

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1 conference, as I recall, defense counsel had suggested a
2 prohibition on live streaming.

3 THE COURT: Yes, that would be included in my
4 conditions as well.

5 MS. LASKY: So would that be -- just to clarify for
6 the record, would that be a prohibition on using an
7 internet-capable device in order to ensure that that is adhered
8 to, your Honor?

9 THE COURT: I don't think he can communicate with his
10 lawyer.

11 MR. KAMINSKY: Yes, he's got to have internet access,
12 so I can send him discovery, so he can do remote proceedings in
13 the state. You'll know if he posts, right? I'm sure --

14 THE COURT: I assume pretrial can monitor that and
15 will know if he posts.

16 Francesca, are you still on?

17 MS. PIPERATO: Yes.

18 THE DEPUTY CLERK: Did you hear the question?

19 THE COURT: So the question here is: We want to put a
20 prohibition on him, as a condition of pretrial release, that he
21 not post videos, or chats, or messages on the internet. Is
22 there some way that you all can monitor that? I want him to be
23 able to communicate with his attorney, so he needs to have
24 email.

25 MS. PIPERATO: There's a little static on the line.

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1 THE DEPUTY CLERK: Hold on. The Judge will pick up
2 the line. Let me just make sure we can do that.

3 THE COURT: No, I don't think we can do that.

4 THE DEPUTY CLERK: I have two people on it.

5 Should I ask her the question, Judge?

6 THE COURT: Yes. I'm going to ask Mr. O'Neill, who's
7 at a better microphone, I think.

8 THE DEPUTY CLERK: Francesca?

9 MS. PIPERATO: Yes.

10 THE DEPUTY CLERK: The Judge is asking: One, do you
11 have the ability to monitor the defendant's online activity?

12 MS. PIPERATO: We can monitor his computer. If the
13 defendant has a laptop, we can monitor if he's not to have,
14 like, social media accounts. We can see what he views on that
15 one computer, or laptop, or iPad.

16 THE COURT: Okay. And his phones have been
17 confiscated, right? The government has his phones, correct?

18 MS. LASKY: Yes, your Honor, although that is not to
19 stop him from getting a new phone, of course.

20 But my understanding from another case that was
21 somewhat analogous was that there might be issues if he, for
22 example, started a new account or used a different streaming
23 service that pretrial was not aware of, and so, in that case,
24 it was set that he or she, in that case, was not able to use
25 the internet except to communicate with lawyers or for medical

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1 reasons with the permission of pretrial, your Honor, for that
2 reason.

3 THE COURT: Okay. Well, that's a good condition.

4 I do have another question for you that Mr. O'Neill
5 reminds me. What has happened to the magazines? Which was
6 really the only truly concerning thing in the underlying
7 record, was the magazines.

8 MS. LASKY: They're part of the arrest evidence, your
9 Honor.

10 THE COURT: Okay. So you've got them?

11 MS. LASKY: Yes, your Honor.

12 THE COURT: Okay.

13 Well, I have the most recent report from pretrial,
14 which does recommend, continues to recommend, that the
15 defendant be released on bond, cosigned by two financially
16 responsible persons, with the defendant's mother to sign as the
17 third-party custodian, and with a number of conditions.

18 So, I'm going to do that, and so we need to have a
19 \$10,000 bond, to be signed by two financially responsible
20 persons. That means they have to be acceptable to the
21 government.

22 And, ma'am, I'm going to make you what's called a
23 third-party custodian of your son. Okay?

24 So, Mr. Sanchez, I'm going to have to explain how
25 you're going to live until this case gets resolved or until the

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1 state court does something with you, which they have a perfect
2 right to do in connection with their cases.

3 You're going to live at home. You're going to have an
4 electronic monitoring bracelet put on you, a location
5 monitoring bracelet, so that your pretrial services officer who
6 is supervising you will know if you leave the house. And
7 you're only allowed to leave the house -- you're only allowed to
8 leave the house -- to meet with your lawyer at times that are
9 preapproved by your pretrial services officer, to meet with a
10 doctor -- I know many of these doctors' appointments, especially
11 counseling appointments, are taking place virtually these days,
12 which is another reason that we can't completely cut the
13 defendant off from the internet, because the mental health part
14 of this is very important to me -- but to have medical
15 appointments, to come to court, to attend religious services,
16 and that's it. That's it. Other than that -- and all those
17 things have to be cleared in advance with your pretrial officer
18 because the officer knows that at 10:00 o'clock in the morning
19 on June 10th, you're going to be at your lawyer's office. All
20 right? But other than that, you can't leave the house. You
21 can't be working for DoorDash, I'm sorry, you can't be dashing
22 around town.

23 So, in essence, you're going to stay in jail, but jail
24 is going to be your parents' home.

25 THE DEFENDANT: I understand.

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1 THE COURT: Okay.

2 The minute that -- the pretrial officer is going to
3 help your family set this up, and there will be a phone in your
4 home that when they call, you better pick up that phone,
5 because if you don't pick up that phone, the next call they're
6 going to make is to me, and, at that point, the government's
7 position here becomes much more convincing to me, and I'm very
8 happy to sign a warrant for your arrest. You don't have any
9 margin for error here. One misstep, you're going in. I can't
10 say it any more clearly than that. I want you to understand
11 it.

12 Now, here are the conditions:

13 One, you surrender your passport, all travel
14 documents, and make no new applications under any name for
15 travel documents;

16 You're restricted to the Southern and Eastern
17 Districts of New York, but you're on home confinement, so,
18 basically, that means that what you can do is go to religious
19 services or go to court here in the Southern District of New
20 York, but not in Connecticut and not in New Jersey;

21 You'll obtain or maintain employment as approved by
22 pretrial or be involved in educational programs as approved by
23 pretrial, but it cannot be a kind of employment that requires
24 you to have internet access or that allows you to be dashing
25 all over town. That's -- excuse me, no, you're going to talk

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1 to your lawyer, not to me. Let me finish with the conditions.
2 Okay?

3 You are required to have mental health evaluation and
4 treatment. You are very much in need of some mental health
5 counseling, very much, based on what I've seen so far. And if
6 medication is prescribed for you by a mental health treatment
7 provider, you must take the medication. That's a condition of
8 your supervision;

9 You may not possess a firearm, a weapon, or
10 destructive device, or — let me underscore this — ammunition
11 for a firearm, weapon, or destructive device;

12 You have to make all your state court dates;

13 You have to abide by the temporary orders of
14 protection that have been entered against you, have absolutely
15 no contact with any of your victims on the state crimes or this
16 crime. Should you have any knowledge of who they are or a way
17 to do that, you can have no contact with them at all;

18 Your use of the internet during your pretrial
19 supervision period is limited to contact with your lawyer, and
20 the mental health treatment provider, and your pretrial
21 services officer. That's three people — your lawyer, pretrial,
22 the mental health counselor — nobody else, nobody else;

23 You may not post any tweets, sweets, videos,
24 Instagrams under your name or any other name or handle of any
25 sort while this is pending.

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1 Do you understand me?

2 THE DEFENDANT: Yes.

3 THE COURT: Good. Because I hear about one, in you
4 go.

5 Yes, Mr. Kaminsky.

6 MR. KAMINSKY: It occurs to me, your Honor, that so
7 limiting his internet usage may prevent him from applying for
8 jobs, which I think might be a good thing.

9 THE COURT: Whether he applies for a job or not is up
10 to pretrial. I'm inclined to leave him where he is; I'm
11 inclined to leave him in his home.

12 MR. KAMINSKY: Okay.

13 THE COURT: All right. At least until the mental
14 health counselor gets a hold of him, and we know what we're
15 doing. But what I said was obtain and maintain employment as
16 approved by pretrial, educational programs as provided and
17 approved by pretrial. Pretrial may want him to go to school, I
18 don't know, but I need him to be off the internet as much as
19 humanly possible, okay? So if there's something that comes up,
20 Mr. Kaminsky, that would require a modification of this
21 condition, you can talk to the government, and you can always
22 come to me.

23 MR. KAMINSKY: Understood.

24 The other issue, and maybe this is asking for too
25 much, your Honor, is it occurs to me if he's going to be in his

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1 apartment all day and not able to work, it might be good for
2 him to be able to use Netflix or something like that.

3 THE COURT: Mr. Kaminsky, I've imposed a condition.
4 Your client --

5 MR. KAMINSKY: I'll send him some books, your Honor.

6 THE COURT: Your client used the internet to broadcast
7 something that never should have happened, and I really think
8 this is a bailable case, but that's all I think, Mr. Kaminsky.

9 MR. KAMINSKY: Understood.

10 THE COURT: I watched that video. That is a terrible
11 thing to do to anybody -- a terrible thing to do to anybody --
12 and he used the internet to do it.

13 Also, Francesca, from pretrial, I want drug testing.

14 MS. PIPERATO: I'm sorry, your Honor, I couldn't hear.

15 THE COURT: Drug testing. I'm imposing that as a
16 condition.

17 THE DEPUTY CLERK: Francesca, the Judge is asking if
18 drug testing condition is appropriate.

19 THE COURT: No, I'm saying it's going to happen. I've
20 decided it's appropriate.

21 THE DEPUTY CLERK: It will be listed, Francesca.

22 MS. PIPERATO: Okay. Can I, if possible, clarify one
23 condition that I didn't hear?

24 THE COURT: Yes.

25 MS. PIPERATO: Home detention with location

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1 monitoring?

2 THE COURT: That is correct, Francesca.

3 MS. PIPERATO: Okay. If possible, can it please be
4 noted that the defendant is permitted to self-install the
5 equipment at the direction of pretrial services?

6 THE COURT: Francesca, I'm not sure how that works.
7 We have here a crime that is alleged to have been committed
8 using the internet. I want him to have as little to do with
9 this as possible, but if you can provide the equipment and
10 instructions for how to install it? Is that what you want to
11 do?

12 MS. PIPERATO: Well, for the home detention, because
13 I'm talking about the bracelet, it allows us to have him report
14 home and directs him --

15 THE COURT: Wait, wait, wait.

16 THE DEPUTY CLERK: Francesca, stop.

17 THE COURT: Slow down, Francesca.

18 THE DEPUTY CLERK: You're going to start from the top.
19 The court reporter did not get what you said. Explain what
20 you're trying to tell the judge.

21 MS. PIPERATO: Okay. For home detention with location
22 monitoring, we would ask the Court to note that the defendant
23 be permitted to self-install the equipment. This allows us to
24 direct the defendant to report home and to his installing the
25 remaining equipment with our direction.

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1 THE COURT: Okay, if that's what you're doing these
2 days. Is that what you're routinely doing these days,
3 Francesca? Is that the usual procedure these days?

4 MS. PIPERATO: Yes, it is.

5 THE COURT: Okay. Then fine.

6 MS. PIPERATO: And for the computer monitoring, if the
7 Court would like to know, pretrial services is to monitor the
8 defendant's computer, then we would have somebody install that
9 equipment and monitor his internet access.

10 THE COURT: Okay. Well, pretrial services must
11 monitor his computer usage, must monitor his computer usage.

12 MS. PIPERATO: Yes.

13 THE COURT: So I understand you're trying to avoid
14 making a home visit. You may have to make a home visit, or
15 somebody from your office who is vaccinated may have to make a
16 home visit in this case, but whatever equipment is needed has
17 to be installed.

18 MS. PIPERATO: I believe the equipment for the
19 computer, I don't think we physically have to be there to
20 install it.

21 THE COURT: I'm sorry, I didn't understand that.

22 THE DEPUTY CLERK: Repeat that, Francesca.

23 MS. PIPERATO: For the computer monitoring equipment,
24 I'm not exactly sure if someone has to physically be there or
25 have the defendant report to the office. I can get

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1 clarification on that.

2 THE COURT: Ah, okay. You'll need to get
3 clarification on that because I really have to tell you, I'd
4 rather somebody went to his home and installed it.

5 Were there other conditions?

6 MS. LASKY: If I may, your Honor, just to clarify -
7 sorry - again, on the internet point, is it your Honor's
8 condition that he is not to have his own internet-capable
9 phone, such that he could have a flip phone if he's calling his
10 lawyer, for example, or something? I just don't know if
11 pretrial can similarly monitor a phone that is capable of using
12 the internet.

13 THE COURT: I know less than you know. I know less
14 than you know. If there is a phone, a noninternet-capable
15 phone, that will allow him to call his lawyer, fine, but I know
16 for a fact that he's going to need to have some
17 internet-capable device in order to have the mental health
18 counseling, because it's not going to be in person, it's going
19 to be remote. That's what they're all doing these days.

20 MS. LASKY: Understood, your Honor. I think it's the
21 difference between having your own device or, for example,
22 using a family device that isn't a constant temptation, but I
23 defer to your Honor about the most elegant way to craft it,
24 your Honor.

25 MR. KAMINSKY: Your Honor, I think we can let pretrial

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1 sort it. I do believe they can monitor phones, but if they
2 can't, obviously he can't have an internet-accessible phone.

3 THE COURT: Okay, fine. That's fine with me.

4 MR. KAMINSKY: Your Honor --

5 THE COURT: Somehow I rather imagine that we may as
6 well have an initial conference. I rather imagine that the
7 government has provided all the discovery that it really needs
8 to provide.

9 MS. LASKY: Your Honor, we have not. We will be able
10 to do so in a matter of a week or two, your Honor. The
11 government and defense --

12 THE COURT: Has he been arraigned, by the way?

13 MS. LASKY: I'm sorry?

14 THE COURT: He has not been arraigned, yet, on the
15 indictment?

16 MS. LASKY: Correct, your Honor.

17 THE COURT: Can we arraign him?

18 MS. LASKY: Thank you, your Honor.

19 THE COURT: I had no idea.

20 THE DEPUTY CLERK: Mr. Sanchez, the United States
21 Attorney for the Southern District of New York has filed an
22 Indictment 21 CR 269, which charges you in one count with false
23 information and hoaxes. It states that on or about
24 February 13, 2021, in the Southern District of New York, you
25 knowingly engaged, and attempted to engage, in conduct with

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1 intent to convey false and misleading information under
2 circumstances where such information may reasonably be
3 believed, and where such information indicated that an activity
4 had taken, was taken, or would take place that would constitute
5 a violation of Title 18, United States Code, Sections 844(i)
6 and 2332a(a), to wit, you conveyed a hoax, threat to detonate a
7 bomb in the vicinity of a restaurant in Manhattan, in violation
8 of Title 18, United States Code, Section 1038(a)(1) and 2.

9 Have you received a copy of this indictment?

10 THE DEFENDANT: Yes.

11 THE DEPUTY CLERK: Have you discussed it with your
12 attorney?

13 THE DEFENDANT: Yes.

14 THE DEPUTY CLERK: How do you plead at this time to
15 this indictment?

16 Counsel?

17 THE COURT: Counsel, you want to enter a plea for him?

18 MR. KAMINSKY: Not guilty, your Honor.

19 THE COURT: Thank you.

20 Okay. So if the government can finish producing
21 discovery within ten days, Mr. Kaminsky, how much time do you
22 want?

23 MS. LASKY: Your Honor, just to clarify, the
24 government and defense counsel -- I believe defense counsel is
25 considering our protective order, so we will want to have that

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1 in place, but then ten days should likely be enough, but we
2 have some large videos that the issue has been trying to
3 transfer them and all the technology there, so those might take
4 a little bit longer, but the bulk of it, we can get out, your
5 Honor.

6 THE COURT: Mr. Kaminsky?

7 MR. KAMINSKY: I haven't seen the protective order.
8 I'm not sure why we need one for stuff that was on the
9 internet, but we'll discuss it.

10 Wait, have you sent me a protective order?

11 MS. LASKY: Yes.

12 MR. KAMINSKY: I have not read the protective order
13 that apparently has been sent to me.

14 I don't think I need more than 30 days to review the
15 discovery, your Honor. The reason why I don't want to rush
16 things is because I might make an application to the Young
17 Adult Opportunity Program, I want to see how the treatment
18 goes. So there are things that are going to be going on other
19 than just my reviewing the discovery, your Honor.

20 THE COURT: Well, when should we set this for, the
21 next conference?

22 MR. KAMINSKY: I would say late June, your Honor.

23 THE COURT: How about July -- I want to be here. I
24 have July 6, 7, 8, 12, 13, 14, 15.

25 MR. KAMINSKY: Could we do 12, 13, or 15, your Honor?

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1 THE COURT: Yes. We can do the afternoon of the 12th,
2 anytime on the 13th.

3 Jim, what have we got?

4 THE DEPUTY CLERK: 3:00 o'clock on the 13th.

5 THE COURT: Is that okay with the government?

6 MS. LASKY: Yes, your Honor.

7 THE COURT: Okay. So 3:00 o'clock on Tuesday,
8 July 13th. That will be in this courtroom, unless you get a
9 notice that it's been moved to another courtroom, because my
10 courtroom can be used for trials.

11 MR. KAMINSKY: Your Honor, there remains the question
12 of whether Mr. Sanchez can be released today or only once the
13 signatures are on the bond.

14 THE COURT: I really think we should get everything
15 signed and sealed, please.

16 MR. KAMINSKY: We'll move expeditiously, your Honor.

17 THE COURT: Thank you very much.

18 So, Mr. Sanchez, I mean business. So I'm letting you
19 go home, but home really is jail, and I mean it. And you
20 better cooperate with your pretrial officer, you better
21 cooperate with your lawyer, you better cooperate with the
22 mental health treatment, you better not think you're smarter
23 than I am, because you're not, you better stay off the
24 internet, and you will be back in this courtroom on the
25 afternoon of July 13th, and we'll see how things are going.

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1 Time is excluded in the interests of justice, the
2 defendant's interests in a speedy trial being outweighed by the
3 need for the government to complete the production of
4 discovery, and with the defendant's consent, correct?

5 MR. KAMINSKY: Yes.

6 THE COURT: Okay. Thank you.

7 Anything else?

8 MS. LASKY: Just one remaining question from the
9 government on an administrative note: The copy -- the
10 submission that I filed yesterday, whether I can submit a
11 redacted copy of that on the docket? Because it --

12 THE COURT: Yes.

13 MS. LASKY: Thank you, your Honor.

14 I guess one other administrative note, just to note
15 for the record, is the pretrial conference that was previously
16 scheduled will be --

17 THE COURT: Yes, we'll just get -- move that over to
18 July 13th.

19 MS. LASKY: Thank you, your Honor.

20 THE COURT: There's no reason to bring you back again.

21 MS. LASKY: Right.

22 THE COURT: Okay.

23 MS. LASKY: Okay.

24 THE COURT: All right. Thank you, everybody.

25 Ma'am, sorry to make you his jailer, but we'll see

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1 what happens. Okay?

2 Just remember, one misstep, you're going in.

3 THE DEFENDANT: Thank you.

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